



## PLANNING COMMISSION STAFF REPORT JULY 12, 2012

<b>Project:</b>	<b>ANNUAL REVIEW OF THE CENTRAL PARK TERRACES PROJECT (FORMERLY KNOWN AS CENTRAL PARK SOUTH) DEVELOPMENT AGREEMENT (PLN2012-00209)</b>
<b>Proposal:</b>	To consider a City Manager's Report on an Annual Review of Development Agreement PLN2005-00131 for a 185-unit residential development (Central Park Terraces, formerly known as Central Park South) consisting of 145 townhouses and a 40-unit apartment building on a 13-acre site in the Irvington Community Plan Area.
<b>Recommendation:</b>	Find the applicant in compliance with the applicable provisions of Development Agreement PLN2005-00131
<b>Location:</b>	41075 Railroad Avenue in the Irvington Community Plan Area APNs 525-0150-001-03, 525-0165-001-03, 525-0195-0001-00, 525-0195-087-03 (See aerial photo next page)
<b>Area:</b>	13± acres
<b>People:</b>	Erika Salum/Pulte Homes, Applicant & Property Owner Steve Kowalski, Staff Planner (510) 494-4532; <a href="mailto:skowalski@fremont.gov">skowalski@fremont.gov</a>
<b>Environmental Review:</b>	This annual review is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378 in that the activity does not meet CEQA's definition of a "project."
<b>General Plan:</b>	Residential - Low-to-Medium, 8.8-14.5 du/ac; Residential – Urban, 30-70+ du/ac; Private Open Space
<b>Zoning:</b>	P-2005-131

### EXECUTIVE SUMMARY

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In December 2008, City Council adopted an ordinance that approved Development Agreement (DA) PLN2005-00131. The purpose of the DA was to implement a settlement agreement between the City and the prior owner of the property related to acquisition of a portion of the site necessary for the extension of the Bay Area Rapid Transit system (BART) to South Fremont. The DA is general in nature with no developer or City obligations extending beyond the entitled 185-unit Central Park South residential project. As such, there are no specific actions that need to be satisfied other than the applicant's obligation to initiate annual DA reviews. The original property owner neglected to initiate the first annual review by April 2010. Since that time, the property/project was purchased by Pulte Homes. Pulte initiated the annual review for the second year (April 2010 through April 2011) to demonstrate their good faith effort to comply with the provisions of the DA. Pulte is now following through with the second annual review for the period from April 2011 through April 2012 to demonstrate its continued good faith compliance with the project's remaining milestones. Staff recommends that the Planning Commission find Pulte to be in compliance with the provisions of the DA and direct Pulte to return in one's year time for the next annual review.

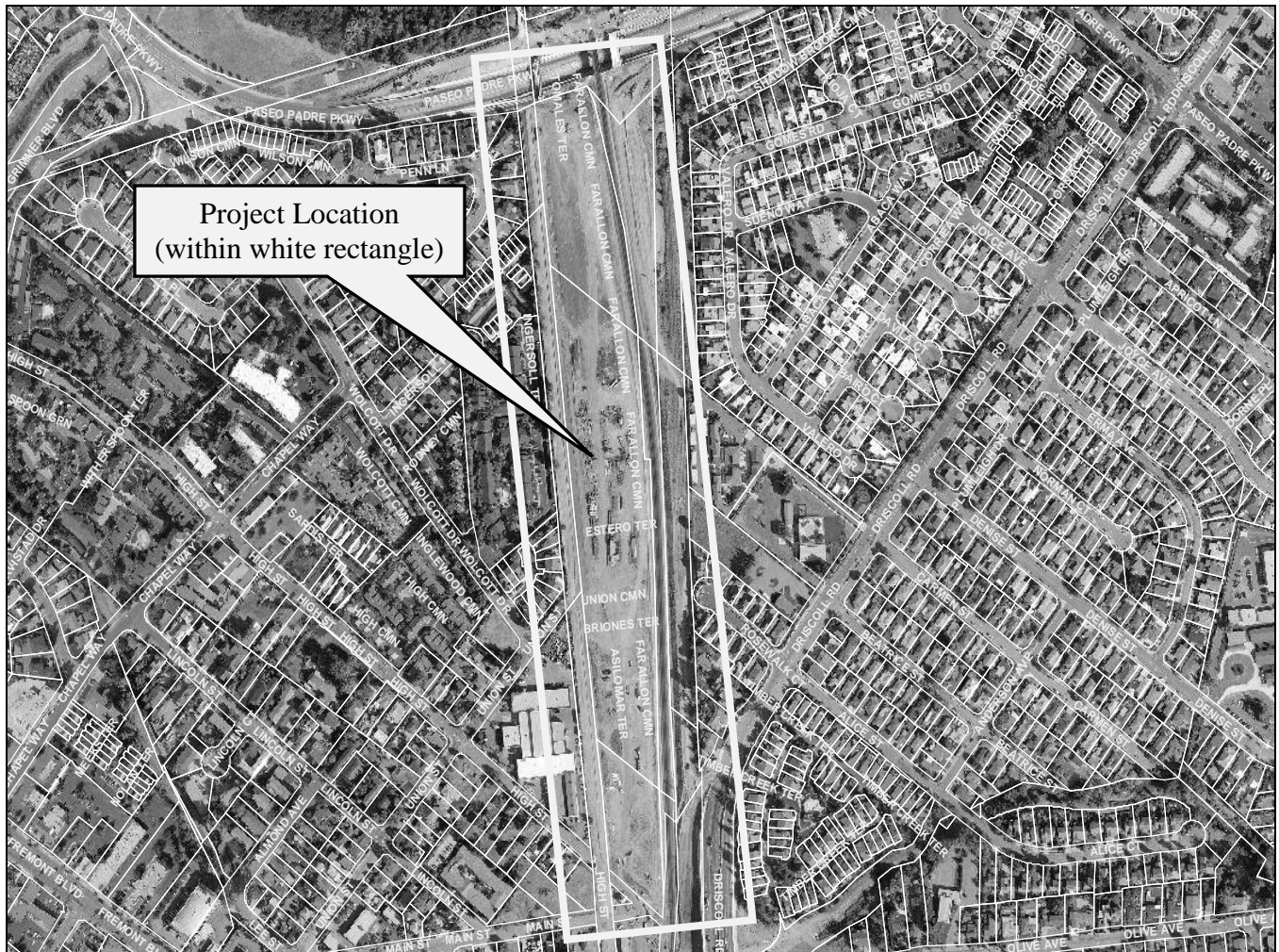


Figure 1: Aerial Photo (2009) of Project Site and Surrounding Area.



## SURROUNDING LAND USES

North: Central Park (across Paseo Padre Parkway); Open Space (O-S)

South: Vacant/Future BART Station (across Washington Boulevard); Light Industrial (I-L)

East: Vacant/Future Union Pacific Railroad tracks and BART tracks; Light Industrial (I-L)

West: Single-family, Multi-family, Contractor Shops; R-1-6, P-83-2, P-83-12, R-G-40, R-3-35, I-L

## **BACKGROUND AND PREVIOUS ACTIONS**

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In December 2008, City Council approved a Mitigated Negative Declaration, General Plan Amendment, Preliminary and Precise Planned District, Vesting Tentative Tract Map No. 7910, Private Street, General and Summary Street Vacations, and a Development Agreement (DA) to allow a 185-unit mixed residential project on a 13± acre site in Irvington. The site is generally bounded to the north and south by two major roadways, Paseo Padre Parkway and Washington Boulevard, respectively. Directly west of the site is the former Union Pacific Railroad (UPRR) track. Directly east of the site is the future BART rail corridor currently under construction to extend BART services from central Fremont to southern Fremont and San Jose. In order to facilitate construction of the grade separations, the UPRR tracks were relocated to east side of the project site in September 2008, directly adjacent to the BART extension line. To facilitate the BART extension, two significant public works projects have also been completed to provide rail grade separations at Paseo Padre Parkway and Washington Boulevard directly north and south of the project site.

In order to make construction of the grade separation projects feasible, the City needed to acquire a portion of the project site. Additionally, construction of the Paseo Padre Parkway undercrossing would eliminate the project site's access to the parkway. In 2004, the City filed an eminent domain action to acquire the property, and the property owner (at that time) filed a cross-complaint for damages against the City for its actions related to the grade separation project. In early 2007, the City entered into a settlement agreement with the property owner. A number of provisions of dismissal of the lawsuit were provided for as a part of that agreement. All of the settlement agreement provisions were satisfied through the project entitlement in 2008. One of these provisions was the execution of a DA between the City and property owner (now Pulte Homes). The first annual review of the DA was conducted on March 10, 2011, by the Planning Commission, at which time the Commission found Pulte Homes to be pursuing in good faith with the project in accordance with the provisions of the DA.

## **PROCEDURE FOR TONIGHT'S HEARING**

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At tonight's hearing, the Planning Commission is charged with considering the request to find that the applicant has complied in good faith with the terms and conditions of the DA for the period under review (April 30, 2011 through April 30, 2012), based on substantial evidence presented by the applicant and attached hereto.

## **DEVELOPMENT AGREEMENT TERMS:**

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The DA is basic in its structure, generally not including any additional obligations beyond those required as part of the project entitlements. The annual review date for the DA is April 30<sup>th</sup> each year ending in 2019. Since the last review was conducted in March 2011, Pulte was obligated to meet the following milestones as part of its Affordable Housing Agreement for the project:

<b>Milestone</b>	<b>Achievement Date</b>
Finish construction drawings for 40-unit apartment building	6/28/2011
Submit apartment building construction drawings to City	7/21/2011
Submit for annual DA review; request release of up to 50 additional Market Rate Units based on completion of milestones	2/1/2012
Finish grading associated with apartment building	3/1/2012
Planning Commission annual DA review, including Milestone Review	4/30/12
Permits ready to be issued for apartment building (for reference here only – not an obligation for this annual review)	7/21/2012
Finish construction of street and infrastructure improvements for apartment building (for reference here only – not an obligation for this annual review)	9/1/2012

With the exception of the last applicable milestone in the table above (the annual review of the DA to be done by April 30, 2012), Pulte and/or Braddock & Logan (the for-profit developer who purchased, and is constructing, the apartment building) have fulfilled each one on or ahead of schedule. The apartment building is now fully permitted and under construction. The annual DA review is approximately two months behind schedule due to the fact that Pulte temporarily halted construction of the project while requesting approval to eliminate the remaining Plan 1 units from the subdivision and replace them with Plan 2 units due to poor sales of the Plan 1 floor plans. At the June 14, 2012 Planning Commission meeting, staff presented a memo summarizing the proposed modification and informing the Commission of the Planning Manager's intent to approve Pulte's request. Since the Commission did not raise any objections, the modifications were approved. Pulte is now proceeding with the annual review process.

At this time, Pulte is also requesting the release of the next 50 Market Rate Units per the third milestone in the table, as well as a release of their Affordable Housing In-lieu Fees which they paid to the City for the Market Rate Units that were permitted during 2011 (see Informational Item #1). If the Commission finds that Pulte has complied with the terms of the DA, then it may allow Pulte to proceed with the next 50-unit phase of construction, and the City can release the remaining balance of the in-lieu fee payments (\$474,724.20) directly to Braddock & Logan to help pay for the cost of the apartment building. To date, Pulte has completed all of the street and infrastructure improvements for the project, twenty (20) of the market-rate units (three of which are currently being used as the model home and sales office complex), the community park, and the bicycle/jogging trail adjacent to the project. Braddock and Logan obtained its first permits and begun construction of the apartment building in late March 2012 and expect to complete that portion of the project by April 2013.

## **FINDINGS FOR APPROVAL**

Pursuant to Fremont Municipal Code (FMC) Section 8-7112, if the Planning Commission finds the developer to be in compliance with the DA, the review is completed. If the Planning Commission finds and determines on the basis of substantial evidence that the developer has not complied in good faith with the terms and conditions of the DA during the period of review, the Planning Commission must forward a recommendation to the City Council for enforcement action. In considering the matter, the City Council may elect to modify or terminate the DA.

In order for the Planning Commission to find the applicant in compliance with the DA, the applicant must clearly demonstrate that they have complied in good faith with the terms of the agreement for the period under review. Based on the analysis in the “Development Agreement Terms” section, above, staff recommends the Planning Commission find that the applicant has demonstrated on the basis of substantial evidence that they have complied in good faith with the requirements of the DA over the last year.

## **ENVIRONMENTAL REVIEW**

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Planning Commission action to make a finding that the applicant is in conformance with the DA is not a “project,” as defined by the California Environmental Quality Act (CEQA). As such, no environmental review of the proposed action is required pursuant to CEQA Guidelines Section 15061(b)(3), the *General Rule*, because it can be seen with certainty that there is no possibility that the activity in question would result in a significant environmental effect.

In 2008, prior to entitlement of Central Park Terraces, a comprehensive environmental analysis of the project occurred. That analysis identified concerns regarding potential impacts in the topics of air quality, geology/soils, hazards/hazardous material, noise, and traffic/transportation. The adopted Mitigated Negative Declaration for the project includes mitigation measures which reduce the identified impacts to less-than-significant levels. These mitigation measures were included as conditions of approval for this project. As such, the Planning Commission recommended and the City Council agreed that adoption of a Mitigated Negative Declaration was appropriate. Implementation of these mitigation measures is in process and will be complete prior to issuance of building permits.

## **PUBLIC NOTICE AND COMMENT**

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Public hearing notification is applicable. A total of 46 notices were mailed to owners and occupants of all property within 300 feet of the project site. The hearing notices were mailed on June 29, 2012. A Public Hearing Notice was published on June 26, 2012 by *The Argus* on this same date.

## **ENCLOSURES**

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**Informational Items:** Informational 1 [Letter from Pulte Homes dated June 8, 2012](#)

## **RECOMMENDATION**

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1. Hold public hearing.
2. Find that the Development Agreement Annual Review is exempt from the California Environmental Quality Act (CEQA) under Article 5, Section 15061(b)(3), the *General Rule*, because it is not a “project,” as defined by CEQA. As such, no environmental review of the proposed action is required because it can be seen with certainty that there is no possibility that the activity in question (i.e., Development Agreement conformity finding) would result in a significant environmental effect.
3. Find on the basis of substantial evidence that the applicant has complied in good faith with the terms and conditions of the Development Agreement for the period under review (April 2011 through April 2012).



